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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/647,980

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Karl-Heinz Pitsch

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EXAMINER

DANNEMAN, PAUL

ART UNIT

PAPER NUMBER

3627

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/647,980	<b>Applicant(s)</b> PITSCH, KARL-HEINZ	
	<b>Examiner</b> PAUL DANNEMAN	<b>Art Unit</b> 3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-8,10-13,15-20,22-27,29-34,36-39,41-46 and 48-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-8,10-13,15-20,22-27,29-34,36-39,41-46 and 48-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### Response to Amendment

1. Claims 1, 8, 12, 19, 27, 34, 38-39, 41-45 and 50 have been amended.
2. Claims 1, 3-8, 10-13, 15-20, 22-27, 29-34, 36-39, 41-46 and 48-51 are pending and have been examined in this application.

### Response to Arguments

3. Applicant argues that the Examiner has failed to establish a prima facie case of obviousness because the combination of Klein, Ushikubo, and Bartholomew does not teach or suggest all the claim limitations of independent claims 1, 8, 12, 19, 27, 34, 38 and 45. Specifically, applicant argues ***“only the present invention teaches or suggest on demand remote inventory management of a hair care or cosmetic vending apparatus and scheduling delivery to vending apparatus based on the remote inventory management, thereby eliminating the responsibility and cost associated with maintaining and managing inventory of hair care/cosmetic products.”*** Respectfully, the Examiner must disagree. Klein in at least Column 1, lines 7-11 discloses a device for formulating cosmetic product and dispensing a custom mix of the active chemicals in response to a customer's criteria at a Point-of-Sale. Ushikubo in at least Column 5, lines 28-32 discloses maintaining a list of goods which have been sold within the automatic vending machine. Bartholomew in at least Column 2, lines 19-31 discloses a system for the packaging and mixing of a custom cosmetic. Bartholomew in at least Column 6, lines 44-67 and Column 7, lines 1-2 discloses compiling the data collected (customer preferences) through the web site or elsewhere into a database and using the data concerning the quantities of inventory of a color or effect to stock or manufacture. Bartholomew in at least Column 6, lines 6-23 and lines 28-36 discloses internet related transactions using credit cards and other payment methods. Bartholomew in at least Column 11, lines 20-43 further discloses that inventory levels are recalculated whenever a new reservoir is added. Bartholomew further discloses that in one embodiment the computer that recalculates the inventory can also notify a remote subscriber of the reduction in inventory, obviating the need for the on-site operator to monitor inventory amounts. Therefore the combination of Klein, Ushikubo and

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Bartholomew discloses a cosmetic vending system which monitors and reports its inventory status to a remote subscriber/user.

4. Applicant further argues ***“that the Examiner has succumbed to the lure of prohibited hindsight reconstruction.”*** Respectfully, the Examiner must disagree. Klein’s invention is for the purposes of formulating and dispensing cosmetic products at a point-of-sales device while maintaining an inventory status (Fig.6a, 6b, Column 4, lines 54-67). Ushikubo is an automatic vending machine having security measures. Bartholomew is a custom cosmetic dispensing system with a method of doing business for both point-of-sale and remote transaction. The combination of these results in applicant’s invention.

#### ***Specification***

5. The amendment filed 10 February 2009 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: ***“an on demand remote inventory management of said vending device.”***

Applicant is required to cancel the new matter in the reply to this Office Action.

#### ***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. **Claims 1, 8, 12, 19, 27, 34, 37 and 45** are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for ***“procuring hair care or cosmetic products on***

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***demand at the point-of-use***”, does not reasonably provide enablement for ***“providing on demand remote inventory management of said vending device.”*** The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims.

***Claim Rejections - 35 USC § 103***

8. **Claims 1, 3-8, 10-13, 15-20, 22-27, 29-34, 36-39, 41-46 and 48-51** rejected under 35 U.S.C. 103(a) as being unpatentable over Klein et al., US 5,163,010 hereafter known as Klein and further in view of Ushikubo, US 4,767,917 and further in view of Bartholomew et al., US 7,099,740 B2 hereafter known as Bartholomew.

**Claims 1, 8, 12, 19, 27, 34, 38, and 45:**

With regard to the limitations:

- ***A vending device for hair care or cosmetic products,***

Klein in at least Column 1, lines 7-11 discloses a device for formulating cosmetic product and dispensing a custom mix of the active chemicals in response to a customer's criteria at a Point-of-Sale. Klein in at least Column 2, lines 5-29 further discloses a means for entering the specific input criteria based on a customer's need and a computer outputting a series of instruction sets, dispensing a product (permanent waving solutions, shampoos, dyes, skin lotions, etc.) at a point of sale. Klein in at least Column 6, lines 9-14 discloses the customer criteria are first characterized by the beauty parlor operator.

- ***Sales to authorized personnel,***

Klein does not specifically disclose restricting sales to authorized personnel per se, however in at least Column 6, lines 9-14 discloses the customer criteria are first characterized by the beauty parlor operator. Klein in at least Column 6, lines 39-46 further discloses a beauty parlor operator obtaining a much finer description of a client's hair at any one given time to provide more reproducible results from one permanent wave treatment to the next and still further discloses, in

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at least Column 9, lines 53-56 the stylist applying one of the dispensed products on the client's hair. Ushikubo, in at least Column 2, lines 45-63 discloses a vending machine wherein a sale is effected only when an authorized user using a registered which is validated. Therefore, it would be obvious, at the time of the invention, to one of ordinary skill to modify Klein with the security features of Ushikubo to insure that only properly authorized personnel dispensed hair chemicals for use on a client's hair.

- ***Connected to a central computer to remotely maintain inventory data, and handle transactions.***

Klein does not disclose inventory data per se, however Klein in at least Column 9, lines 62-67 and Column 10, lines 1-36 discloses the computer dispensing by weight the required formulation and still further in at least Column 11, lines 37-51 making a determination that a specified amount of product remains in inventory permitting a certain number of perms to be formulated and asking whether the tanks of solution should be refilled (Fig.6a), hence it would be obvious that the computer keeps a running total of each product dispensed.

Ushikubo does not specifically disclose communicating the inventory data. However, Ushikubo in at least Column 5, lines 28-32 discloses maintaining a list of goods which have been sold within the automatic vending machine. Bartholomew in at least Column 2, lines 19-31 discloses a system for the packaging and mixing of a custom cosmetic. Bartholomew in at least Column 6, lines 44-67 and Column 7, lines 1-2 discloses compiling the data collected through the web site or elsewhere into a database and using the data concerning the quantities of inventory of a color or effect to stock or manufacture. Bartholomew in at least Column 6, lines 6-23 and lines 28-36 discloses Internet related transactions using credit cards and other payment methods.

Bartholomew in at least Column 11, lines 20-43 further discloses that inventory levels are recalculated whenever a new reservoir is added. Bartholomew further discloses that in one embodiment the computer that recalculates the inventory can also notify a remote subscriber of the reduction in inventory, obviating the need for the on-site operator to monitor inventory amounts. Therefore the combination of Klein, Ushikubo and Bartholomew discloses a cosmetic

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vending system which monitors and reports its inventory status to a remote subscriber/user. Therefore, it would be obvious, at the time of invention, to one of ordinary skill to modify the Klein/Ushikubo inventory methods with Bartholomew method for using a network connected to a vending system to collect and transmit inventory data and transaction information with the motivation of insuring that the remote vending system is always properly stocked.

- ***Using a transaction identifier.***

Klein in at least Fig.6c and Column 12, lines 33-43 discloses a client code number and in Fig.6e and Column 12, lines 26-34 discloses the use of a particular client formula number with an automatic printout of the client formula number. Ushikubo in at least Fig.1, Fig.2 and Column 4, lines 49-62 discloses an automatic vending machine with a card whose identifying information is registered and used in a vending machine. Ushikubo in at least Column 5, lines 22-51 discloses that when the registered card is used and validated at the vending machine, goods are conveyed and a list of the goods which have been vended is printed and a copy along with the card identifying information is also stored and updated in the machine every time the registered card is used. Bartholomew in at least Column 6, lines 6-35 discloses the storage of the user profile and associated financial and other data. Bartholomew in at least Column 6, lines 36-67 further discloses that purchaser preferences are compiled in a database and payment is made through a debit system using prepaid or "smart cards."

- ***Thereby providing on demand remote inventory management of said vending device.***

Klein in at least Column 1, lines 7-11 discloses a device for formulating cosmetic product and dispensing a custom mix of the active chemicals in response to a customer's criteria at a Point-of-Sale. Ushikubo in at least Column 5, lines 28-32 discloses maintaining a list of goods which have been sold within the automatic vending machine. Bartholomew in at least Column 2, lines 19-31 discloses a system for the packaging and mixing of a custom cosmetic. Bartholomew in at least Column 6, lines 44-67 and Column 7, lines 1-2 discloses compiling the data collected (customer preferences) through the web site or elsewhere into a database and using the data concerning

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the quantities of inventory of a color or effect to stock or manufacture. Bartholomew in at least Column 6, lines 6-23 and lines 28-36 discloses internet related transactions using credit cards and other payment methods. Bartholomew in at least Column 11, lines 20-43 further discloses that inventory levels are recalculated whenever a new reservoir is added. Bartholomew further discloses that in one embodiment the computer that recalculates the inventory can also notify a remote subscriber of the reduction in inventory, obviating the need for the on-site operator to monitor inventory amounts. Therefore the combination of Klein, Ushikubo and Bartholomew discloses a cosmetic vending system which monitors and reports its inventory status to a remote subscriber/user.

**Claims 4-7, 10-11, 15-16, 18, 22-23, 25-26, 30-33, 36-37, 41, and 48-51:**

With regard to the limitations:

- ***Sales to authorized personnel,***
- ***Processing a payment,***
- ***Printing a receipt.***

Klein does not disclose processing a payment or printing a receipt, per se. However, Klein in at least Column 2, lines 5-8 discloses a point-of-sale and in at least Fig.1 and Column 2, lines 52-67 discloses a device representing a point-of-sale with an input means for formulating and dispensing a cosmetic formulation as requested. Klein in at least Fig.6e and Column 12, lines 26-34 discloses an automatic printout of a client code number at the point-of-sale. Ushikubo in at least Column 5, lines 22-51 discloses the conveyance of goods, the payment for those goods and the printing of a list of the goods that were sold. Therefore, it would be obvious, at the time of the invention, to one of ordinary skill to conclude that a point-of-sale with a printer by its nature is able to process payments and print receipts. Therefore, it would be obvious, at the time of the invention, to one of ordinary skill to modify Klein with the payment features of Ushikubo to insure that goods were properly paid for, the sale was properly recorded and a receipt was supplied.



**Claims 3, 13, 17, 20, 24, 29, 39, 42-44, and 46:**

With regard to the limitations:

- ***Mixing formulations per input criteria (shade, hair condition, etc.),***
- ***Dispensing formulations.***

Klein in at least Fig.6f, Column 12, lines 65-67 and Column 13, lines 1-2 discloses the display of the device indicating that a formulation is being dispensed and mixed and an indication when the dispensing and mixing is completed. Klein in at least Fig.7, Column 13, lines 40-42 discloses an optional sound circuit which may be utilized during the dispensing cycle and in lines 49-55 dispensing a specific weight of the solutions into a receptacle. Klein in at least Column 14, lines 32-39 still further discloses that the device has a dispensing means for automatically dispensing said plurality of cosmetically functional mixtures sequentially from their respective container in a formulation receptacle at the point-of-sale.

**Conclusion**

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL DANNEMAN whose telephone number is (571)270-1863. The examiner can normally be reached on Mon.-Thurs. 6AM-5PM Fri. off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Florian Zeender can be reached on 571-272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Paul Danneman/

Examiner, Art Unit 3627

27 March 2009

**/F. Ryan Zeender/**

**Supervisory Patent Examiner, Art Unit 3627**